IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4535 OF 2003.

Smt.Saraswati Shankar Shelar ..Petitioner

versus

Kulgaon Badlapur Municipal Council
and others ..Respondents

Mr. V.A.Gangal for the petitioner

Mr.D.A.Adsule for the Respondent No.1.

Ms. Gauri Godse for Respondent No.2.

Coram : S.R.Sathe, J.
Dated : 13th Feb., 2006

P.C.

1. Heard both the learned Advocates.

2. Petitioner, the original plaintiff in Regular Civil Suit No.32 of 2002 has filed suit for permanent injunction against defendant- Kulgaon Badlapur Municipal Council restraining them from demolishing the suit house. He also prayed for temporary injunction. The learned trial Judge was pleased to grant temporary injunction after hearing both the parties. The defendant, Municipal Council preferred MCA No.63 of 2002. The 2nd Additional District Judge, Kalyan came to the conclusion that the plaintiff has failed to make out any prima facie case to show that the construction carried out by

the plaintiff is legal. He, therefore, allowed the appeal and dismissed the plaintiff's application for temporary injunction. Being aggrived by the said order, the plaintiff filed the present writ petition.

3. Shri Gangal, learned Advocte for the petitionr submits that the Plaintiff has carried out the construction after the time he was given oral permission by the concerned authority and as the same is in existence, the same should not be demolished till the disposal of the suit. The learned Advocate for the respondent defendant submitted that the plaintiff has in fact not asked any declaration that the notice issued by the Municipal Council is not legal and correct and the suit itself is not tenable.

4. It must be noted that admittedly the suit house is in existence since the year 2002. So, considering this aspect and the fact that the plaintiff has showed willingness to proceed with the suit immediately, I think that it is desirable to allow this writ petition and set aside the order passed by the 2nd Additional District Judge, Kalyan and direct the trial court to dispose of the suit

according to law within two months. Hence , the order passed by the 2nd Additional District Judge, Kalyan on 17.6.2003 is set aside.

5. Parties are directed to maintain status quo as on today till disposal of the suit.

6. Both the parties are directed to appear before the trial court on 20.2.2006.

7. The trial court is directed to dispose of the suit within two months from the receipt of the papers by the trial court.

8. Both the parties are directed to co-operate for early disposal of the matter.

9. Parties to act on authenticated copy of this order.

(S.R.Sathe, J.)